



Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 478
* 11404 Moorage Way * La Conner, Washington 98257 *

May 1, 2015

Colonel John Buck
United States Army Corps of Engineers
P.O. Box 3755
4735 East Marginal Way South
Seattle, Washington 98124-2255

RE: Nationwide 48 Aquaculture Issues

Dear Colonel Buck:

A handwritten signature in black ink, appearing to read "John Buck", written over the printed name "Colonel Buck".

I am writing today to encourage protection of eelgrass beds that may be affected by shellfish aquaculture under the proposed Nationwide Permit 48 ("NWP 48"). The United States Army Corps of Engineers ("ACOE") is currently revising and reissuing NWP 48, which is a programmatic permit that will affect virtually all of the shellfish aquaculture operations in Washington State. The ACOE has issued a programmatic biological assessment ("PBA") on shellfish aquaculture and is in the process of consulting with the National Marine Fisheries Service ("NMFS") under Section 7 of the Endangered Species Act ("ESA"). Our Tribe's concerns go beyond ESA however. We are looking to the ACOE to protect habitat for chum, coho, crab, and other fisheries on which the Swinomish people have always depended. We are very concerned that the proposed NWP 48 does not adequately protect native eelgrass beds from aquaculture expansion and that this lack of protection will have serious consequences for treaty resources.

The ACOE biological assessment for aquaculture is based on acreages reported by the shellfish growers themselves, without an independent verification. The growers have been clear that they want their entire ownership covered under NWP 48, not just the areas under cultivation. The PBA treats these uncultivated acres as "fallow" acres, some of which have not been cultivated for decades, if ever. In Samish Bay alone, according to the PBA, there are 1,300 cultivated acres and 2,300 "fallow" acres. Most, if not all of these fallow acres coincide with native eelgrass beds. Under the proposed NWP 48 there will be few restrictions to prevent aquaculture expansion into these eelgrass areas.

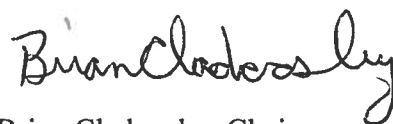
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I want to make it absolutely clear at this point that the Swinomish Indian Tribal Community does not have an issue with existing aquaculture operations; indeed, we intend to establish our own shellfish growing operations in the coming years. But the proposed permit conditions in the PBA do not allow new aquaculture to expand into eelgrass. We think that new and "fallow" areas should be treated the same since there is little qualitative difference between the two. If expansion into new areas with eelgrass requires an individual permit, then expansion into fallow areas with eelgrass should too.

Last November our natural resources affiliate, the Skagit River System Cooperative, sent comments to NMFS and the ACOE summarizing our view of the science on eelgrass and aquaculture, and pointing out discrepancies in the cultivated areas provided in the PBA. In response, NMFS and the ACOE inserted a condition in the permit ("Condition #7") that would provide the same protection to eelgrass in "fallow" areas as in new aquaculture growing areas. That condition was later removed, apparently at the behest of the shellfish industry and the Washington congressional delegation. Since then both agencies (NMFS and ACOE) have implied that the decision to remove Condition #7 came from the other agency. Ultimately the decision rests with the ACOE, so we would like to meet with you and your regulatory staff, and invite NMFS to be present at the same time to discuss the inclusion of Condition #7 to protect eelgrass in "fallow" growing areas and the quality of the aquaculture inventory used to prepare the PBA.

We at the Swinomish Indian Tribal Community look forward to resolving this important issue for eelgrass protection in a timely manner, as a release of the biological opinion for NWP 48 is imminent. Please let me know how we can move forward collaboratively on this issue to insure for the continued protection of Treaty resources. Feel free to contact me directly or Larry Wasserman of my staff at 360-466-7250 to work through this issue. Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Brian Cladoosby". The signature is written in a cursive, flowing style.

Brian Cladoosby, Chairman

cc: Will Stelle, NOAA